

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

IN RE GERBER PRODUCTS COMPANY	:	Master File No. 1:21-cv-0269
HEAVY METALS BABY FOOD	:	
LITIGATION	:	Class Action
	:	
THIS DOCUMENT RELATES TO:	:	Jury Trial Demanded
	:	
	:	
<i>Keeter v. Gerber Products</i>	:	Case No. 1:21-cv-0269
<i>Company</i>	:	
	:	
<i>Moore v. Gerber Products</i>	:	Case No. 1:21-cv-00277
<i>Company</i>	:	
	:	
<i>Hazely, et al. v. Gerber Products</i>	:	Case No. 1:21-cv-00321
<i>Company</i>	:	
	:	
<i>Bryan, et al. v. Gerber Products</i>	:	Case No. 1:21-cv-00349
<i>Company</i>	:	
	:	
<i>Adams v. Gerber Products</i>	:	Case No. 1:21-cv-00410
<i>Company</i>	:	

**BRIEF IN SUPPORT OF UNOPPOSED MOTION OF PLAINTIFFS TO  
CONSOLIDATE ACTIONS PURSUANT TO FEDERAL RULE OF CIVIL  
PROCEDURE 42(a)(2)**

Plaintiffs in each of the above-captioned actions (collectively, “Plaintiffs”), by their counsel, respectfully submit this brief in support of their motion to consolidate these actions, pursuant to Federal Rule of Civil Procedure 42(a)(2). Pursuant to Local Civil Rule 7(E), counsel for the parties’ conferred regarding the substance of Plaintiffs’ motion and defense counsel have represented that they do not oppose Plaintiffs’ motion to consolidate these actions.

This Court has previously consolidated the two first-filed cases *Keeter* and *Moore*, in a Consolidation Order entered on March 15, 2021 (ECF No. 8), designating the combined cases as

*In re Gerber Product Company Metal Baby Foods Litigation*, Master File No. 1:21-cv-0269 (the “Consolidated Action”). Subsequently, on May 12, 2021, plaintiffs in the Consolidated Action, as well as the plaintiffs in the *Hazely*, *Bryan* and *Adams* cases and other purchasers of Gerber Products Company (“Gerber”) baby goods products, filed a Consolidated Class Action Complaint, thereby putting the claims of the plaintiffs in the *Hazely*, *Bryan* and *Adams* cases before this Court in the Consolidated Action. (ECF No. 23). Accordingly, it will further the interests of judicial efficiency to consolidate the *Hazely*, *Bryan* and *Adams* cases with the *Keeter* and *Moore* actions in this Consolidated Action,

**Pursuant to Federal Rule of Civil Procedure 42, This Court Has Broad Power to Consolidate Actions in this Court**

Federal Rule of Civil Procedure 42(a) states, “[i]f actions before the court involve a common question of law or fact, the court may... (2) consolidate the actions.” The Fourth Circuit has held that “District courts have broad discretion under F.R.Civ.P. 42(a) to consolidate causes pending in the same district.” *A/S J. Ludwig Mowinckles Rederi v. Tidewater Construction Corp.*, 559 F.2d 928, 933 (4th Cir. 1977). The Fourth Circuit further held that in exercising its discretion, the district court’s analysis is guided by the following criteria:

The critical question for the district court in the final analysis was whether the specific risks of prejudice and possible confusion were overborne by the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives. See Fed.R.Civ.P. 42; see generally 9 C. Wright & A. Miller, *Federal Practice & Procedure: Civil* §2383 (1971).

*Arnold v. Eastern Air Lines, Inc.*, 681 F.2d 186, 193 (4th Cir. 1982).

Each of the above-captioned actions have been filed in the District in which Defendant Gerber has its corporate headquarters, at 1812 North Moore Street, Rosslyn, Virginia, a part of Arlington County. The actions arise from the same events and present numerous common factual

and legal questions relating to the subject baby food products manufactured by Gerber (“the Baby Food Products”), including the following as outlined in Plaintiffs’ respective complaints:

- a. Whether Defendant owed a duty of care;
- b. Whether Defendant knew or should have known that the Baby Food Products contained heavy metals;
- c. Whether the Baby Food Products contain dangerous levels of toxic heavy metals;
- d. Whether the marketing, advertising, packaging, and other promotional materials for the Baby Food Products are deceptive;
- e. Whether Defendant’s actions violate the state consumer fraud statutes identified in the complaints;
- f. Whether Defendant’s actions constitute common law fraud;
- g. Whether Plaintiffs and members of the Classes were damaged by Defendant’s conduct as alleged in the complaints;
- h. Whether Defendant was unjustly enriched at the expense of Plaintiff and the members of the Classes; and
- i. Whether Plaintiff and the members of the Classes are entitled to injunctive relief.

See Consolidated Class Action Complaint, ¶ 232. The above-captioned actions all demand a trial by jury.

Moreover, as noted above, the Plaintiffs in each of the above-captioned actions have already joined as Plaintiffs and proposed class and sub-class representatives in the Consolidated Class Action Complaint filed in this Consolidated Action on May 12, 2021.<sup>1</sup> Given the breadth of

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<sup>1</sup> There are three other cases brought in this District by alleged purchasers of Gerber Baby Food Products (*Wilson, et al. v. Gerber Products Company*, Case No. 1:21-cv-00372; *Bryan, et al. v. Gerber Products Company*, Case No. 1:21-cv-00478; and *Cantor, et al. v. Gerber Products Company*, Case No. 1:21-cv-00489), whose plaintiffs and their counsel chose not to have their claims included in the Consolidated Complaint. Thus, although those three actions also contain numerous common factual and legal questions similar to the common factual and legal questions identified above, Plaintiffs and the Defendant in the *Keeter, Moore, Hazely, Bryan and Adams*

these common issues raised in these already related actions, “the risk of inconsistent adjudications of common factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one” all weigh in favor of consolidation. *Arnold v. Eastern Air Lines, supra*, 681 F.2d at 193.

Plaintiffs accordingly submit that consolidating these actions will lead to more efficient litigation before this Court.

### **Conclusion**

For each and all the foregoing reasons, Plaintiffs’ unopposed motion for consolidation is well-taken and should be granted.

**Dated: May 20, 2021**

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cases are not seeking through this uncontested motion the consolidation of the 00372, 00478 or 00489 cases into the Consolidated Action at this time.

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 20, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic mail notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on May 20, 2021.

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